Teng Chang Khim (appealing as speaker of Selangor State Legislative Assembly) v Badrul Hisham bin Abdullah & Anor

FEDERAL COURT (PUTRAJAYA) — CIVIL APPEAL NO 01(F)-26–08 OF 2016(B)
RAUS SHARIF PCA, SURIYADI, AHMAD MAAROP, ZAINUN ALI AND ABU SAMAH FCJJ
28 AUGUST 2017

Constitutional Law — Legislature — Parliamentary privilege — First respondent filed action for declaration that appellant acted ultra vires arts 69 and 70 of the Selangor State Constitution — Whether appellant's decision within realm of internal arrangement of State Legislative Assembly and therefore not amenable to judicial proceedings — Whether there existed circumstances where words or actions taking place outside walls of Parliament or State Legislative Assembly were also protected by doctrine of parliamentary privilege — Federal Constitution art 72 — Selangor State Constitution arts 69, 70 & 77

On 19 January 2011, the Speaker ('the appellant') for Selangor State Legislative Assemble ('the SLA') had declared the seat for the N46 Pelabuhan Klang Constituency vacant due to the first respondent's absence from the SLA meetings for a period of six months without the leave of the appellant ('the appellant's decision'), pursuant to art 69 of the Selangor State Constitution. Consequently, the first respondent filed an originating summons and the High Court had allowed the same and granted a declaration that the appellant had acted ultra vires of arts 69 and 70 of the Selangor State Constitution in declaring the State seat for the N49 Pelabuhan Klang Constituency vacant on the ground that the appellant had no power to do so. The Court of Appeal upheld the High Court's decision, hence the present appeal. The issues arose were: (a) whether the appellant's decision was within the realm of the internal arrangement of the SLA and therefore, not amenable to judicial proceedings; and (b) whether there existed circumstances where words or actions taking place outside the walls of Parliament or SLA were also protected by the doctrine of parliamentary privilege.

Held, allowing the appellant's appeal and setting aside the decisions of the High Court and the Court of Appeal with no order as to costs:

(1) The appellant was acting within the limits of the power given to him under art 69 of the Selangor State Constitution when he declared the N46 Pelabuhan Klang Constituency seat vacant. Even though the declaration was made outside the SLA proceedings, it was inevitably connected with the essential business of the SLA, made within the

parameters set out by art 69 of the Selangor State Constitution, and was made to regulate the internal affairs of the SLA. Consequently, the appellant's act was non-justiciable and the appellant was entitled to the protection of parliamentary privilege enjoyed by the SLA as provided for under art 72(1) of the Federal Constitution and paras 2 and 3 of the Schedule to art 77 of the Selangor State Constitution (see paras 35–37 & 51).

[Bahasa Malaysia summary

Pada 19 Januari 2011, Pengerusi ('perayu') bagi Dewan Undangan Negeri Selangor ('DUNS') telah mengisytiharkan kerusi bagi N46 Kawasan Pelabuhan Klang kosong akibat ketidakhadiran responden pertama di dalam mesyuarat DUNS untuk selama enam bulan tanpa izin perayu ('keputusan perayu), berikutan perkara 69 Perlembagaan Negeri Selangor. Akibatnya, responden pertama memfailkan saman pemula dan Mahkamah Tinggi telah membenarkannya dan memberikan perisytiharan bahawa perayu telah bertindak ultra vires perkara 69 dan 70 Perlembagaan Negeri Selangor dalam mengisytiharkan kerusi Negeri bagi N49 Kawasan Pelabuhan Klang kosong atas alasan bahawa perayu tidak mempunyai kuasa untuk berbuat sedemikian. Mahkamah Rayuan mengesahkan keputusan Mahkamah Tinggi, maka rayuan ini. Isu-isu yang berbangkit adalah: (a) sama ada keputusan perayu adalah dalam lingkungan penyusunan dalam DUNS dan oleh itu, tidak bertanggungjawab kepada prosiding kehakiman; dan (b) sama ada wujud keadaan di mana perkataan-perkataan atau tindakan berlaku di luar Parlimen atau DUNS juga adalah dilindungi oleh doktrin keistimewaan Parlimen.

Diputuskan, membenarkan rayuan perayu dan mengenepikan keputusan Mahkamah Tinggi dan Mahkamah Rayuan tanpa perintah kepada kos:

(1) Perayu bertindak dalam had kuasa yang diberikan kepadanya di bawah perkara 69 Perlembagaan Negeri Selangor apabila dia mengisytiharkan kerusi N46 Kawasan Pelabuhan Klang kosong. Walaupun pengisytiharan tersebut dibuat di luar prosiding DUNS, ia adalah tidak dapat tidak berhubungan dengan urusan penting DUNS, yang dibuat mengikut parameter yang ditetapkan oleh perkara 69 Perlembagaan Negeri Selangor, dan dibuat untuk mengawal hal ehwal dalaman DUNS. Akibatnya, tindakan perayu adalah tidak wajar dan perayu berhak kepada perlindungan keistimewaan Parlimen yang dinikmati oleh DUNS seperti yang diperuntukkan di bawah perkara 72(1) Perlembagaan Persekutuan dan perenggan 2 dan 3 Jadual kepada perkara 77 Perlembagaan Negeri Selangor (lihat perenggan 35–37 & 51).]

Notes

For cases on parliamentary privilege, see 3(2) *Mallal's Digest* (5th Ed, 2015) paras 3034–3036.

Cases referred to

Bradlaugh v Gosset (1984) 12 QBD 271, HL (refd)

Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun [2016] 4 MLJ 661; [2016] 7 CLJ 143, FC (distd)

Fan YewTeng v Government of Malaysia [1976] 2 MLJ 262 (refd)

Lim Cho Hock v Speaker, Perak State Legislative Assembly [1979] 2 MLJ 85 (refd)

R v Chaytor [2010] 3 WLR 1707, SC (refd)

Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors [2014] 4 MLJ 12; [2014] 3 CLJ 173, FC (refd)

YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener) [2009] 4 MLJ 24; [2009] 4 CLJ 253, FC (distd)

Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo [2014] 6 MLJ 812, FC (refd)

Legislation referred to

Federal Constitution art 72, 72(1)

Laws of the Constitution of Perak arts 63, XLIV

Laws of the Constitution of Selangor 1959 arts 69, 70, 77, Schedule

Perak Legislative Assembly (Privileges) Enactment 1959

Rules of High Court 1980 O 18 r 19(1)(a), (1)(b), (1)(c), (1)(d)

Appeal from: Civil Appeal No B-01–199 of 2011 (Court of Appeal, Putrajaya)

Tommy Thomas (Ganesan Nithi and Rahayu Mamuzaini with him) (Tommy Thomas) for the appellant.

Awang Armadajaya Awang Mahmud (Azizan Md Arshad, Nadia Hanim Ahmad Tajuddin, Norinna Bahadun and Muhammad Azmi Mashud with him) (Senior Federal Counsel, Attorney General's Chambers) for the respondents.

Raus Sharif PCA (delivering judgment of the court):

INTRODUCTION

[1] This is an appeal by the appellant against the decision of the Court of Appeal given on 3 December 2014 which affirmed the decision of the High Court.

[2] The High Court, had on 18 February 2011 allowed the first respondent's originating summons ('OS') and granted a declaration that the appellant had acted ultra vires of arts 69 and 70 of the Selangor State Constitution in declaring the state seat for the N46 Pelabuhan Klang Constituency vacant on the ground that the appellant had no power to do so.

[3] Before the High Court, the first respondent was the plaintiff, the appellant was the first defendant and the Election Commission was the second defendant. In this judgment we shall refer to the appellant as 'the speaker', the first respondent as 'Badrul' and the Election Commission as 'SPR'.

[4] On 28 July 2016, the speaker was granted leave to appeal against the decision of the Court of Appeal on the following questions of law:

(1) Whether a decision of the Speaker of the Selangor Legislative Assembly in declaring vacant a seat because of a State Assemblyman's absence for 6 months without leave of the Speaker pursuant to Article 69 of the Selangor Constitution can be challenged in legal proceedings, having regard to constitutional privileges and immunities conferred on the Speaker and the Legislative Assembly 'inter alia' under:

   (i) Article 75 of the Selangor Constitution;

   (ii) Article 77 of the Selangor Constitution;

   (iii) Paragraph 2 and 3 of the first Schedule of the Selangor Constitution; and

   (iv) Article 72 of the Federal Constitution.

(2) If the answer to the first question is in the affirmative, whether the Court of Appeal was correct in law in calculating the 6 months period specified in Article 69 of the Selangor Constitution to commence from the first day of the State Assemblyman's absence from sitting without leave of the Speaker, rather than to commence from the last sitting at which the said State Assemblyman was present.

BACKGROUND FACTS

[5] The relevant background facts of this case are these. Badrul was elected as a member of the Selangor Legislative Assembly ('SLA') in the 12th General Election in March 2008 for the N46 Pelabuhan Klang Constituency.

[6] Badrul's last attendance in the SLA's meeting was recorded on 15 July 2010, which was the fourth sitting of the second meeting of the third session.

[7] The third meeting of the third session commenced on 8 November 2010. Badrul did not attend any of the six days sittings of the SLA in November

2010. It was only on 10 December 2010 that the speaker received a letter from Badrul citing 'traditional medical treatment in Pahang' as the reasons for his absence from the SLA sittings in November 2010.

[8] The speaker, by a letter dated 21 December 2010 rejected Badrul's application for leave, as Badrul had failed, among others, to provide any cogent reason as to the delay in his application for leave of absence from the SLA sitting. Moreover, the application for leave was only made after the November sitting was over.

[9] On 19 January 2011, the Speaker declared the seat for the N46 Pelabuhan Klang Constituency vacant due to Badrul's absence from the SLA Meetings for a period of six months without the leave of the Speaker, pursuant to art 69 of the Selangor Constitution. The reason for the decision was later explained by the Speaker in a press conference and in a statement issued by him.

[10] Thereafter, on 21 January 2011, the Speaker notified SPR of his decision of declaring the seat for the N46 Pelabuhan Klang Constituency vacant, and that in accordance with art 70(5) of the Selangor Constitution, a vacant seat must be filled within sixty days from the date of the Speaker's decision.

[11] On 24 January 2011, Badrul filed an originating summons at the Shah Alam High Court seeking, inter alia:

(a) a declaration that he remained an assemblyman for the N46 Pelabuhan Klang Constituency in the SLA and was entitled to attend and participate in every SLA and carry out his duties and tasks in relation to it;

(b) further and/or in the alternative, there was no vacancy of the N46, Pelabuhan Klang constituency seat in the SLA; and

(c) further and/or in the alternative, a declaration that the decision of the speaker to declare the vacancy of his seat, that is the N46 Pelabuhan Klang constituency seat in the SLA, was ultra vires art 69 of the Selangor Constitution and/or is wrong and/or null and void.

[12] On 18 February 2011 the Shah Alam High Court granted the reliefs sought by Badrul. The Court of Appeal upheld the High Court's decision.

AT THE FEDERAL COURT

[13] As stated earlier there were two questions of law posed before this court. We will first deal with the first question.

[14] The issue in the first question is whether the decision of the speaker in declaring vacant a seat because of a State Assemblyman's absence for six months without leave of the speaker pursuant to art 69 of the Selangor Constitution was within the realm of the internal arrangement of the SLA and therefore, not amenable to judicial proceedings.

[15] Learned counsel for the speaker submitted that the acts carried out by the speaker was in exercise of his functions to regulate the internal affairs of the SLA and were immune from being challenged in court. According to learned counsel, the speaker was protected by constitutional privilege guaranteed under art 72(1) of the Federal Constitution as well as art 77 of the Selangor Constitution and the Schedule thereto.

[16] Neither Badrul nor his counsel chose to be present at the hearing of this appeal, despite having been served with the notice of the hearing. However, the learned senior federal counsel ('SFC') on behalf of SPR, submitted that the acts and decision of the speaker to declare the seat held by Badrul to be vacant:

(a) had nothing to do with any proceedings in the SLA;

(b) was not in respect of anything said or vote taken by the speaker when taking part in any proceedings in the SLA; and

(c) had nothing to do with anything published by or under the authority of the SLA.

[17] Thus, it was submitted by the SFC that the act of the speaker in declaring the N46 Pelabuhan Klang Constituency seat vacant, cannot be considered as part of the proceedings of the SLA since it was made during a press conference. In short, his arguments was that it was made outside the walls of the SLA and thus not protected by constitutional privilege as provided for under art 72(1) of the Federal Constitution as well as art 77 of the Selangor Constitution. In support of this argument, the learned SFC brought to our attention the decisions of this court in *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24; [2009] 4 CLJ 253 and *Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun* [2016] 4 MLJ 661; [2016] 7 CLJ 143.

FINDINGS

[18] The privileges of the Legislative Assemblies of all states in Malaysia are guaranteed by art 72(1) of the Federal Constitution.

Article 72 — Privileges of Legislative Assembly

A (1) The validity of any proceedings in the Legislative Assembly of any State shall not be questioned in any Court.

[19] The Selangor Constitution also provides for similar privileges. Article 77 and the Schedule thereto entitled 'Powers and Privileges of the
B Legislative Assembly' provides:

Article 77

The Legislative Assembly shall have the privileges and powers set out in the Schedule hereto.

C Schedule: Powers and Privileges of the Legislative Assembly

2. There shall be freedom of speech and debate or proceedings in the Assembly and such freedom of speech and debate or proceedings shall not be liable to be impeached or questioned in any court or tribunal out of the Assembly.

D 3. No member shall be liable to any civil or criminal proceedings, arrest, imprisonment, or damages by reason of any matter or thing which he may have brought by petition, bill, resolution, motion or otherwise, or have said before the Assembly or any committee.

E **[20]** The privileges and the powers of Parliament and the State Legislative Assemblies have been discussed in a number of cases by our courts. Suffice to quote two leading cases. The first is *Lim Cho Hock v Speaker, Perak State Legislative Assembly* [1979] 2 MLJ 85. There, the speaker filed a setting aside application on the ground that the court had no jurisdiction to entertain the
F originating summons filed by the applicant assemblyman to, inter alia, declare the vacancy of the speaker's seat. In allowing the application, Eusoffe Abdoolcader J (as he then was) held that:

In the light of these constitutional provisions, it is clear that the two matters raised
G in these proceedings are for the Assembly to decide and within its exclusive jurisdiction, and not for the courts to determine. Under the *lex et consuetudo parliamenti*, the Assembly has control over its proceedings, procedure and members and may decide questions as to the qualifications and disqualifications. The provisions in the Federal and State Constitutions I have discussed crystallise and encapsulate this important principle of non-justiciability of its intra-mural activities
H in the courts which may perhaps be appropriately termed the Bradlaugh principle, highlighted in the *Bradlaugh v Gosset* (1884) 12 QBD 271.

[21] *Bradlaugh v Gosset* (1984) 12 QBD 271 was decided by the English House of Lords. There, the speaker of the House prevented the plaintiff, an
I elected atheist, from exercising his statutory right of making oath by affirmation which was a precondition to his right to participate in proceedings in the House of Commons. The plaintiff was prevented from taking his seat, resulting in his filing an action against the speaker. Lord Coleridge CJ, in dismissing the plaintiff's claim, held that the courts had no power to interfere

in the internal management of the House of Commons.

[22] The second case is *Fan YewTeng v Government of Malaysia* [1976] 2 MLJ 262. There, the plaintiff, a Member of Parliament, sought to challenge in court a motion proposed in the Dewan Rakyat to disqualify him by reason of his conviction and fine exceeding RM2,000. Before he had exhausted his final right of appeal to the Privy Council, Chang Min Tat J (as he then was), dismissed the claim and held that issues pertaining to members' disqualification were outside the jurisdiction of the court and within the exclusive prerogative of the Dewan Rakyat. His Lordship held:

> The issue in his application is the right of the plaintiff to sit in the Dewan Rakyat and, in my view and with respect, this issue comes fully within the compass of arts 53 and 63. The issue therefore involves the proper and reasonable construction of these articles. The language is plain and umambiguous. Giving the words therein their plain and grammatical meaning, the decision on this issue is for the House to take, it is final when taken and the validity of the proceedings cannot be questioned in any court. These articles can admit of no other construction.

[23] Thus, there can be no doubt that the business of Parliament and State Legislative Assemblies are immune from judicial interference. The courts have no power to interfere with the internal management of Parliament or any State Legislative Assembly. This immunity arises from the doctrine of separation of powers between the three principal organs of government, namely, the executive, the legislature and the judiciary.

[24] However, in the present case, the complaint by Badrul before the High Court was that the act of the speaker in declaring the N46 Pelabuhan Klang Constituency seat vacant, was not made during the proceedings of the SLA, but was done outside the walls of the SLA. Thus, it was contended that the decision of the speaker cannot be regarded as part of the proceedings which warrant protection and ultimately disqualify the court's jurisdiction.

[25] The crucial issue now is whether there exists circumstances where words or actions taking place outside the walls of Parliament or State Legislative Assemblies are also protected by the doctrine of parliamentary privilege. A similar issue was faced by the English Supreme Court in *R v Chaytor* [2010] 3 WLR 1707. There, a nine member bench of the Supreme Court dismissed a defence of parliamentary privilege raised by Members of Parliament who had been charged with dishonestly submitting fraud claims for expenses they alleged were incurred in travelling to Parliament. While the defence of privilege was rejected in that case because the submissions of travelling claims were completely unrelated to the internal business of the House, Lord Phillips, MR upheld Parliament's exclusive jurisdiction over its internal affairs by reference to two decided English authorities:

A 76. Different considerations apply to claims for judicial review in relation to the conduct by each House of its internal affairs. *The courts will respect the right of each House to reach its own decision in relation to the conduct of its affairs*. Two examples will illustrate this. In *Re McGuinness's Application* [1997] NI 359 the applicant sought to challenge by judicial review the decision of the Speaker that those who B had not complied with the requirements of the Parliamentary Oaths Act 1866 would be denied certain of the facilities of the House. Kerr J dismissed his application. He held at p 6: *I am quite satisfied that, whether it qualifies as a proceeding in Parliament or not, the Speaker's action lies squarely within the realm of internal arrangements of the House of Commons and is not amenable to judicial review*.

C *In R v Parliamentary Commissioner for Standards, Ex p Al Fayed* [1998] 1 WLR 669 the *Parliamentary Commissioner for Standards had published a report relating to a complaint by the applicant against a Member of Parliament. The applicant sought permission to challenge this by judicial review*. The application was refused by Sedley J and renewed before the Court of Appeal. Lord Woolf MR gave a judgment with D which the other members of the court agreed dismissing the application. He said, at p 673: The focus of the Parliamentary Commissioner for Standards is on the propriety of the workings and the activities of those engaged within Parliament. He is one of the means by which the select committee set up by the House carries out its functions, which are accepted to be part of the proceedings of the House. This E being the role of the Parliamentary Commissioner for Standards, it would be inappropriate for this court to use its supervisory power to control what the Parliamentary Commissioner for Standards does in relation to an investigation of this sort. The responsibility for supervising the Parliamentary Commissioner for Standards is placed by Parliament, through its standing orders, on the Committee of Standards and Privileges of the House, and it is for the body to perform that role and F not the courts. (Emphasis added.)

[26] Lord Philips further held:

G ... In considering whether actions outside the House and committees fall within parliamentary proceedings because of their connection to them, it is necessary to consider the nature of that connection and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament.

H **[27]** The principle in *R v Chaytor* was accepted and applied by this court in *Teng Chang Khim (Chairman of Select Commitee on Competence, Accountability and Transparency and Chairman of Commitee of Privilege Selangor State Assembly) & Ors v Dato' Raja Ideris bin Raja Ahmad & Ors* [2014] 4 MLJ 12; [2014] 3 CLJ 173. In that case, the SLA passed a motion to establish a Select I Committee on Competence, Accountability and Transparency ('SELCAT') with the first defendant speaker as chairman and the second to seventh defendants as committee members. SELCAT was authorised to conduct public hearings and the evidence presented therein may be publicly disseminated or published.

[28] The plaintiffs filed an originating summons seeking declarations that: A

(a) the composition of SELCAT does not reflect the balance between the parties within the SLA as required by Order 72(1) of the Standing Orders of the Legislative Assembly for the State of Selangor ('standing orders');

(b) in conducting its hearings publicly and in allowing the publication and dissemination of reports concerning its proceedings prior to the presentation of its formal report to the SLA, SELCAT has acted in breach of Order 75 of the standing orders and the Laws of the Constitution of Selangor 1959 ('Selangor Constitution'); B C

(c) the first defendant as Speaker of SLA, and the Chairman of the Privileges Committee of the SLA, is in a position of conflict when he sits as the Chairman of SELCAT and therefore all proceedings conducted by SELCAT are null and void as being contrary to the rules of natural justice; D

(d) the proceedings and functions of SELCAT have impeded upon matters reserved by the standing orders and/or the Selangor Constitution for the Public Accounts Committee of the SLA and thereby SELCAT has acted in excess of its jurisdiction; E

(e) matters deliberated upon by SELCAT have exceeded beyond the scope of the matters expressly referred to SELCAT by SLA and therefore the said proceedings are null and void as being contrary to Order 73(4) of the standing orders;

(f) the SLA does not have the jurisdiction to pass and/or enact criminal offences in the nature of the contempt of the House (State of Selangor) Enactment 2009 and the same is herefore ultra vires the Selangor Constitution and/or the Federal Constitution; and F

(g) the formation of SELCAT and/or the proceedings thereof are null and void and of no effect whatsoever. G

[29] The defendants applied to strike out the originating summons under O 18 r 19(1)(a), (b), (c) and or (d) of the RHC and/or under the inherent jurisdiction of the court by reason of, inter alia: H

(a) art 72 of the Federal Constitution; and

(b) paras 2–3 of the Schedule to art 77 of the Law of Constitution of Selangor 1959 (Selangor Constitution). I

[30] The High Court allowed the defendants' application and struck out the originating summons on the ground that the passing of the motion was clearly a proceeding of the SLA, and by virtue of art 72 and paras 2 and 3 of the Schedule of the Selangor Constitution, it was not justiciable. It was further

held that SELCAT, being a Committee of the SLA, also enjoyed the same protection.

[31] On appeal, the Court of Appeal reversed the decision of the High Court. The defendants then took the matter to this court on the question as to whether the resolution of the SLA establishing SELCAT with the composition, powers and workings as passed in the resolution, and the internal proceedings of SELCAT pursuant to that resolutions, were justiciable in view of the provisions of parliamentary privilege entrenched in the Federal Constitution and the Selangor Constitution.

[32] This court allowed the appeal and reinstated the decision of the High Court in striking out the originating summons on the ground that art 72 of the Federal Constitution as well as paras 2–3 of the Schedule to art 77 of the Selangor Constitution provided an absolute immunity against judicial review of proceedings in the SLA. Ahmad Maarop FCJ (as he then was) speaking for this court which applied *R v Chaytor*, said:

> [45] It is clear to us that firstly, *the freedom of speech and debate in Parliament and in its committees are protected by parliamentary privilege as this is where the core or essential business of Parliament, takes place*. In other words, for the purpose of protection of parliamentary privilege apart from proceedings in the House of Parliament, proceedings in parliamentary committees are also 'proceedings in Parliament'. *Secondly, even actions outside Parliament and its committees may fall within parliamentary proceedings because of their connection to them (and qualify for the protection of privilege). However, it is necessary to consider the nature of the connection between those actions and Parliament or its committees, and whether, if such actions do not enjoy privilege, this is likely to impact adversely on the core or essential business of Parliament*. Adopting the aforesaid approach to the case before the court, His Lordship concluded: 'If this approach is adopted, the submission of claim forms for allowances and express does not qualify for the protection of privilege. Scrutiny of claims by the courts will have no adverse impact on the core or essential business of Parliament, it will not inhibit debate or freedom of speech. Indeed it will not inhibit any of the varied activities in which Members of Parliament indulge that bear in one way or another on their parliamentary duties. The only thing that it will inhibit is the making of dishonest claims.

[33] In that case, this court also recognised that the SLA is the ultimate arbiter of all actions taken within it. Such action would include those taken by the speaker, whose decisions are final and can only be challenged by a motion put before the SLA. In this respect, this court re-affirmed *Bradlaugh v Gossett* which was quoted with approval in *Lim Cho Hock*'s case.

[34] Thus, the law is well settled. Now let us apply the law to the facts of the present case. Here, the power of the speaker to declare the N46 Pelabuhan Klang seat vacant is provided for under art 69 of the Selangor Constitution. It

provides:

> 69 Absence of a member
>
> If a member of the Legislative Assembly is without leave of the Speaker absent from every sitting thereof for a period of six months his seat shall be declared vacant by the Speaker.

[35] Article 69 of the Selangor Constitution expressly provides the authority for the speaker to declare a seat vacant if a member of the Legislative Assembly is absent without leave from every sitting for a period of six months. However, the provision is silent as to whether the declaration should be made by the speaker during the proceedings of the assembly. The provision also does not impose any obligation on the speaker to consult members of the legislative assembly before declaring a seat vacant.

[36] The question is whether the speaker's action in declaring Badrul's seat for the constituency of N46 Pelabuhan Klang vacant at a press conference was in exercise of his functions to regulate the internal affairs of the SLA and was immune from challenge in court. Our answer is in the affirmative. Firstly, the declaration was purely made within the parameters set out by art 69 of the Selangor Constitution. Secondly, the declaration was inevitably connected to the essential business of the SLA and was made in the performance of the speaker's essential function as a speaker.

[37] Therefore, we are of view that the speaker in the present case had acted legally under art 69 of the Selangor Constitution in declaring Badrul's N46 Pelabuhan Klang Constituency seat vacant. The course taken by the speaker is non-justiciable as it is protected by art 72(1) of the Federal Constitution and paras 2–3 of the Schedule to art 77 of the Selangor Constitution.

[38] With respect, we find the two cases of *YAB Dato' Dr Zambry bin Abd Kadir & Ors v YB Sivakumar a/l Varatharaju Naidu (Attorney General Malaysia, intervener)* [2009] 4 MLJ 24; [2009] 4 CLJ 253 and *Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun* [2016] 4 MLJ 661, cited by the learned SFC in opposing this appeal must be distinguished from the present case.

[39] In *Zambry v Sivakumar,* the first applicant (Zambry) was sworn in before His Royal Highness, the Sultan of Perak as the Menteri Besar on 6 February 2009 while the second to seventh applicants were sworn in as State Executive Councilors of Perak (EXCO members) on 10 February 2009. On 11 February 2009, by way of a letter, one assemblyman complained to the Speaker (Sivakumar) that Zambry and the EXCO members had committed acts of contempt of the Perak State Legislative Assembly ('PSLA').

[40] Sivakumar subsequently issued summonses pursuant to standing orders of the PSLA containing the alleged breaches of privileges and directions against Zambry and EXCO members to attend before the Committee of Privilege (Committee). On 18 February 2009, Zambry and the EXCO members appeared before the Committee and read out a written objection stating that they did not recognize or submit to the jurisdiction of the Committee.

[41] On 19 February 2009, Zambry and the EXCO members were served with letters dated 18 February 2009 stating that they were found guilty as charged and in exercising his powers, the Speaker, suspended Zambry for 18 months, and the EXCO members 12 months from attending the sittings of the PSLA.

[42] Zambry and the EXCO members filed an originating summons in the High Court seeking, inter alia, a declaration that Sivakumar's decision in suspending and prohibiting Zambry and the EXCO members from attending the sittings in the SLA was against the laws of the Perak Constitution and accordingly null and void.

[43] Subsequently, Zambry and the EXCO members filed a notice of motion to this court for certain questions to be answered pursuant to art 63 of the Constitution of Perak. The main issue for determination before this court was whether on the true interpretation of the art XLIV of the Perak State Constitution read together with the standing orders of the Legislative Assembly and Legislative Assembly (Privileges) Enactment 1959 and/or relevant laws, Sivakumar's decision was ultra vires and therefore null and void.

[44] Sivakumar contended that the issue raised by Zambry and the EXCO members were not justiciable by virtue of art 72(1) of the Federal Constitution and the Legislative Assembly (Privileges) Enactment 1959 of Perak. This court in allowing Zambry's and the EXCO Members' motion held:

> [57] Standing Order 72(1) authorises the Committee of Privileges to take cognizance of '... any matter which appears to affect the powers and privileges of the Assembly ...'. In order for a '... matter ...' to have such an effect it must be unlawful or be an infringement of the powers and privileges of the Assembly. It is only then that it can be said that it appears to affect the powers and privileges of the Assembly. The summonses against the applicants state that their acts constitute contempt. As contempt has not been specifically prescribed for, the acts cannot come within the ambit of Standing Order 72(1). Even the Legislative Assembly (Privileges) Enactment 1959 enacted by the Perak legislative Assembly does not contain any provision for the offence of contempt and its punishment. By way of contrast reference must be made to the House of Parliament (Privileges and Powers) Act 1952 which makes specific provision for contempt.
>
> [58] The corollary is that Article XLIV of the Perak State Constitution read together

with the Standing Orders of the Legislative Assembly and the Legislative Assembly (Privileges) Enactment 1959 do not provide for the offence of contempt and the resultant punishment of suspension from attending sessions of the State Legislative Assembly.

[59] In the upshot the suspension of the applicants on account of the alleged contempt committed by them is null and void.

[45] Thus, it is our considered opinion that the decision in *Zambry v Sivakumar* concerns the resolution of the PSLA suspending Zambry and the EXCO members as punishment for contempt allegedly committed by them. It is true, there was a finding by this court that the alleged acts of contempt were committed beyond the walls of the PSLA, but the main reason for declaring Sivakumar's acts as null and void was because those acts which were alleged to constitute contempt and the punishment were not provided for under the Perak State Constitution, the standing orders or the Perak Legislative Assembly (Privileges) Enactment 1959.

[46] In fact this court in *Teng Chang Khim*'s case, expressly cautioned that the decision in *Zambry* was peculiar to its own facts. This was restated by this court in the case of *Yang Dipertua, Dewan Rakyat & Ors v Gobind Singh Deo* [2014] 6 MLJ 812 where it was stated:

[30]... The Federal Court recently in *Teng Chang Khim & 5 Others v dato' Raja Ideris bin Raja Ahmad & 2 others* (Federal Court Civil Appeal No 01–7–03 of 2012(B) unreported) explained and clarified that its decision in Dato' Dr Zambry should be limited to the factual context of that case.

[47] Similarly, the case of *Dewan Undangan Negeri Selangor & Ors v Mohd Hafarizam bin Harun* must also be distinguished from the present case. There, the plaintiff (Hafarizam) was an advocate and solicitor. Acting on the instruction of his client, Hafarizam issued a letter of demand for payment of costs awarded in the civil suit filed by his client against the speaker of the Selangor Legislative Assembly (SLA). The letter was served on the solicitor of the speaker and was brought to the attention of the SLA. The SLA then passed a motion resolving that Hafarizam and his client be referred to the Committee of Rights and Privileges (Committee) of the SLA, on the charge that they have committed an offence against the Assembly by issuing a letter to the speaker which contained language that was indecent, insolent and threatening. As a result, the secretary of the committee issued a summons which ordered Hafarizam to appear before the committee to explain the alleged contempt.

[48] Unhappy with the summons served on him, Hafarizam filed an action in the High Court against the SLA, the secretary and the committee. The following declaration was granted in favour of Hafarizam:

A (a) the summons violated the Federal Constitution and the Selangor State Constitution and therefore, null and void;

(b) the summons was ultra vires art LXXVII and the Schedules of the Selangor Constitution which sets out the powers and privileges of the SLA, the standing order and the Contempt of the House (State of Selangor) Enactment 2009 and was therefore null and void;

B

(c) the issuance of the legal letter of demand in the manner and substance of the letter could not be construed as a contempt of the SLA; and

C (d) any decision, order or matter which arose from the issuance or hearing pursuant to the summonses was null and void.

[49] On appeal, the Court of Appeal upheld the decision of the High Court. On further appeal this court in dismissing the appeal, amongst others, held:

D

> [46] As regards this appeal, it is our judgment the assembly must act within its constitutional and legal powers before the protection provided for by art 72(1) can arise, before passing a resolution of an act of contempt having been committed beyond the walls of the assembly. The assembly's powers are limited by the Selangor State Constitution ...

E

> [47] A careful perusal of the provisions of the Schedule in the Selangor State Constitution, which confers the power and privileges of the assembly, reveal no provision that provides for contempt committed outside the legislative assembly. The defendants too have failed to show which provision in the schedule was relied on to pass the resolution. The assembly has therefore exceeded the jurisdiction provided for in the Schedule.

F

[50] As in *Zambry*'s case, on the facts, *Hafarizam*'s case is also distinguishable from the present case. In both cases, the respective Legislative Assemblies had exceeded its jurisdictions as provided under the Constitution of each state hence there was room for judicial interference.

G

CONCLUSION

[51] In conclusion, we are of the view that in the present case, the speaker was acting within the limits of the power given to him under art 69 of the Selangor Constitution when he declared the N46 Pelabuhan Klang Constituency seat vacant. Even though the declaration was made outside the SLA proceedings, it was inevitably connected with the essential business of the SLA, made within the parameters set out by art 69 of the Selangor Constitution, and was made to regulate the internal affairs of the SLA. Consequently, we rule that the speaker's act is non-justiciable and the speaker is entitled to the protection of parliamentary privilege enjoyed by the SLA as provided for under art 72(1) of the Federal Constitution and paras 2–3 of the Schedule to art 77 of the Selangor Constitution.

H

I

[52] For the reasons given, we answer the first question in the negative. Since the second question depends on the outcome of the first question, we find no necessity to answer the second question.

[53] We hereby allow the speaker's appeal and set aside the decisions of the Court of Appeal and the High Court. We make no order as to costs.

Appellant's appeal allowed; decisions of High Court and Court of Appeal set aside with no order as to costs.

Reported by Dzulqarnain Ab Fatar